

HILLSBOROUGH, SS
NORTHERN DISTRICT

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

NO. 01-C-313
MEAGAN RHEAULT by m/n/f DONNA RHEAULT
and DONNA RHEAULT, Individually

V.

JOSEPH RHEAULT

OPINION AND ORDER

LYNN, J.

The twelve year old plaintiff, Meagan Rheault, sustained serious back and eye injuries while sliding on a snow tube on a hill near her home. In this negligent supervision action brought on Meagan's behalf by her mother, plaintiff Donna Rheault, Meagan alleges that her father, defendant Joseph Rheault, breached the duty of care he owed to his daughter by allowing her to go sliding on the occasion which resulted in her injuries. The matter comes before the court at this time on the defendant's motion for summary judgment. The court concludes that the defendant's actions fall within the scope of his discretionary parental duties and cannot be found palpably unreasonable as a matter of law. Therefore the motion must be granted.

I.

For a moving party to prevail on a motion for summary judgment, "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits filed, [must]

show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." RSA 491:8-a, III (1997). In ruling on the motion, the court must construe all materials submitted in the light most favorable to the nonmovant. Metropolitan Prop. & Liab. Ins. Co. v. Walker, 136 N.H. 594, 596 (1993). However, the party opposing the motion "may not rest upon [the] mere allegations or denials of his pleadings, but ... must set forth specific facts showing that there is a genuine issue for trial." RSA 491:8-a, IV; Gamble v. University of New Hampshire, 136 N.H. 9, 16-17 (1992); ERA Pat Demarais Assoc's. v. Alex. Eastman Foundation, 129 N.H. 89, 92 (1986). A dispute of fact is "genuine" if "the evidence is such that a reasonable [factfinder] could return a verdict for the nonmoving party," and "material" if it "might affect the outcome of the suit." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (construing analogous language of Fed.R.Civ.P. 56); accord. Horse Pond Fish & Game Club v. Cormier, 133 N.H. 648, 653 (1990). Where, as here, the nonmoving party bears the burden of persuasion at trial, that party must "make a showing sufficient to establish the existence of [the] element[s] essential to [its] case" in order to avoid summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

II.

Viewed in the light most favorable to plaintiffs, the record

establishes the following pertinent facts. On February 19, 2000, Meagan invited a friend ("Jessica") to come to her house. The two girls decided to go sledding. Meagan first asked her father, the defendant, for permission. Upon receiving his permission, the children went sledding in the yard. They were using a snow tube with no apparent steering capacity. Meagan then asked the defendant if she and Jessica could go sledding in a different area, on a pathway behind a fence located near their home. The defendant gave his permission. This pathway was frequented by snow machines. It was steep and narrow and surrounded on either side by trees. It was not entirely straight. The children sledded on this hill for approximately one hour, without accident or injury.

The next morning, February 20, 2000, Meagan and two friends (Jessica and another friend, both of whom slept over Meagan's house the night of the 19th) decided to go sledding again. It was approximately 9:00 a.m. Meagan again asked and received the defendant's permission to go sledding in the area beyond the fence. The defendant was watching television at the time. He answered, "yeah, sure." Meagan was the first one on the snow tube that morning. On her first run down the hill she lost control of the tube and struck a tree. As a result of the accident, Meagan permanently lost the sight in her right eye. She also suffered a broken bone in her back, a concussion, and a collapsed lung.

III.

This court has previously held that the "reasonable parent" standard is the test that would most likely be adopted by the New Hampshire Supreme Court to evaluate claims for negligent supervision by a parent which results in injury to his or her child. See Sapienza v. Sapienza, No. 96-C-089, Order of June 20, 1996 (N.D.Hills.Cty.) (Lynn, J.). Although the reasonable parent standard rejects the efforts by some courts to grant categoric immunity for particular types of parental activities, it also recognizes the need for exercise of parental discretion in decision-making regarding the care, discipline and supervision of their children. By factoring such discretion (as well as legitimate differences in parenting styles) into the overall reasonableness equation, the standard requires that in certain instances liability may not be imposed absent conduct that is "palpably unreasonable." Restatement (Second) of Torts 895G, cmt. k, at 431 (1965); see Broadbent v. Broadbent, 907 P.2d 43, 51 (Ariz. 1995) (Feldman, C.J., concurring).

Defendant argues that, applying the reasonable parent standard, he is entitled to summary judgment because the conduct upon which his liability is sought to be predicated is the epitome of discretionary parental decision-making, which no rational fact finder could determine was palpably unreasonable. The reasonable parent standard is applied by asking, "[w]hat would an ordinarily

reasonable and prudent *parent* have done in similar circumstances?"

Anderson v. Stream, 295 N.W.2d 595, 599 (Minn. 1980) (quoting Gibson v. Gibson, 479 P.2d 648, 653 (Cal. 1971) (emphasis in original)). In answering this question, the outcome in any given case "will depend on the facts peculiar to the particular case." See id. (quoting Nolechek v. Gesuale, 385 N.E.2d 1268, 1277 (N.Y. 1978) (Fuchsberg, J., concurring)). Among the factors to be considered are "the age, mental and physical health, intelligence, aptitudes and needs of the child involved; the presence in the family of other children competing for parental time and attention; and the economic, social and physical environment in which the parental conduct occurs. . . ." Id.

At least one court has equated the phrase "palpably unreasonable," which the Restatement fails to define, with the "gross negligence" standard. See Martin v. Yunker, 853 P.2d 1332, 1335 (Or.App. 1993). In contrast to Martin, this court does not view the Restatement's use of the phrase "palpably unreasonable" as an attempt to introduce a heightened standard of culpability when certain categories of parental conduct are involved. Rather, the Restatement merely recognizes that parents are entitled to some amount of leeway when their parenting decisions are being evaluated by a jury. In other words, "[t]he standard to be applied is the traditional one of reasonableness, but viewed in light of the parental role." Gibson, 479 P.2d at 653.

In the instant case, however, the court agrees with the defendant that no reasonable jury could find that the defendant's conduct exceeded the bounds of his reasonable parental discretion.

Meagan was twelve years of age and a seventh grade student at the time she was injured. From all that appears, she was a person of at least average intelligence and maturity for her age. There is no evidence that she suffered from any physical or mental condition that might have negatively affected her ability to engage in sledding. Nor is there any evidence suggesting that she had a past history of irresponsible behavior, unreasonable risk taking, or other conduct that might have given her father cause to question her judgment on the matter of where and how to go sledding. Were the court to hold that a jury could find the defendant liable under these circumstances, it is easy to envision situations wherein a parent could be hailed into court for permitting his or her child to join a pick-up football game, play sand lot baseball, or go to the movies with friends. To be sure, there are certain risks associated with all of these activities. But in the absence of additional factors not present on this record, it is simply not the province of a jury to second-guess a parent's discretionary decisions to allow or disallow such activities.

IV.

For the reasons stated above, the defendant's motion for

summary judgment is hereby granted.

BY THE COURT:

January 28, 2002

ROBERT J. LYNN
Associate Justice